

THE HONORABLE JAMES L. ROBERT

FILED
LODGED

ENTERED
RECEIVED

AUG 18 2008

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

07-CV-01807-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MISSION CAPITAL WORKS, INC., a
Washington Corporation,

Plaintiff,

vs.

SC RESTAURANTS, INC., a California
Corporation; RICHARD SANG, an
individual; RICHIE J.K. SANG, an
individual; BROOKES J.H. SANG, an
individual; SAMPSON RB, LLC, a California
limited liability company; PATRICIA READ,
an individual; GEORGE LEONG, an
individual; and AMBER SANG a/k/a
AMBER LAO, an individual,

Defendants.

Case No. C-07-1807 JLR

~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
OF CIVIL CONTEMPT AND
SANCTIONS AGAINST SC
RESTAURANTS, INC., BROOKES
SANG, AND RICHIE J. K. SANG

I INTRODUCTION

This matter came before the Court upon Mission Capital Works, Inc.'s ("MCW") motion for order to show cause why contempt and punitive, compulsory, and compensatory sanctions should not issue against defendants, specifically against Richie J.K. Sang, Brookes J.H. Sang, and SC Restaurants, Inc. (collectively "defendants"). The Court has considered the written submissions of the parties, the deposition transcripts of Brookes Sang and Richie J.K. Sang, the telephonic testimony taken at the hearing of August 6, 2008, and the

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 1**

PDX\116266\157194\CIJF\2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.822.1711

arguments of MCW's counsel.¹ The Court deems itself apprised in the premises, and finds from clear and convincing evidence that defendants have willfully failed to comply with the Court's orders and the limited receiver's requests. Defendants are, therefore, in contempt of court. Accordingly, the court issues this order of civil contempt and sanctions against defendants in order to compel them to comply.

A. Procedural History

1. Initiation of Lawsuit and Appointment of Limited Receiver

MCW initiated this lawsuit on November 7, 2007.² MCW requested the appointment of a limited receiver to investigate the status of the funds loaned by MCW and to take steps to maintain the *status quo* pending an adjudication of MCW's claims.³ On November 9, 2007, this Court entered an Order to Appoint Limited Receiver.⁴

The Court appointed Edward Hostmann, Inc., to serve as Limited Receiver (the "Receiver"), and it granted the Limited Receiver authority to (1) investigate the assets of the Sangs and SC Restaurants, Inc.; (2) take action to preserve the *status quo*, but not to operate businesses or liquidate assets; (3) take charge, enter into possession of the property of the Sangs and SC Restaurants, Inc., and create an inventory of the property; (4) preserve the *status quo* by monitoring and approve or disapprove all proposed expenditures and transfers by SCR and/or the Sangs; and (5) propound discovery, issue subpoenas, conduct depositions, and take any actions authorized by law to aid in the enforcement of the Court's Order.⁵ The Order further required that the Sangs and SC Restaurants, Inc., submit to the authority of the limited receiver before making expenditures and transfers and refrain from any action contrary to the limited receiver's disapproval of expenditures or transfers.

¹ Defendants have not appeared in this action, either *pro se* or through counsel.

² Dkt. No. 1.

³ Dkt. Nos. 2, 2-2, 3-10, and 15.

⁴ Dkt. No. 14. The appointment was subsequently extended in duration, but not scope.

⁵ See Dkt. No. 14.

1 The limited receiver filed reports on November 28, 2007,⁶ and January 31, 2008.⁷
2 The content of those reports have never been disputed by the Sangs or SC Restaurants, Inc.

3 2. Motion for Contempt and Sanctions

4 On June 19, 2008, MCW moved for an order to show cause why contempt and
5 sanctions should not issue against defendants. This motion was supported by the declaration
6 of David Ebel, the declaration of Edward Hostmann, and the declaration of Kimberley
7 McGair.⁸ No response was received, and MCW submitted a reply memorandum requesting
8 that the order be granted.⁹

9 On June 8, 2008, the Court issued a minute order, setting a hearing for July 24, 2008,
10 at 9:00 A.M., to show cause why contempt and sanctions should not issue.¹⁰ The Court
11 permitted defendants to respond to MCW's motion by July 18, 2008, and MCW was
12 permitted to reply to any such response by July 22, 2008.¹¹ The minute order directed MCW
13 to attempt to provide notice of the minute order and the hearing to Richie J.K. Sang, Brookes
14 Sang, and SC Restaurants, Inc., by sending copies of the order to last known addresses, email
15 addresses, and fax numbers.¹² MCW was further directed to attempt notification by
16 telephone.¹³ Counsel for MCW, Colin Folawn, submitted a declaration, evidencing that these
17 directives were followed.¹⁴

18 This method of notification was successful in providing actual notice to the
19

20 ⁶ Dkt. 26.

21 ⁷ Dkt. 69.

22 ⁸ Dkt. 97 (motion), 98 (Ebel Decl.), and 99 (proposed order).

23 ⁹ Dkt. 100.

24 ¹⁰ Dkt. 101.

25 ¹¹ *Id.*

26 ¹² *Id.*

¹³ *Id.*

¹⁴ See Dkt. 102.

1 defendants because Brookes Sang and Richie J.K. Sang submitted two declarations and an
 2 objection to the declaration of Edward Hostmann.¹⁵ MCW submitted a reply memorandum in
 3 support of its motion, again requesting that defendants be found in contempt, sanctioned, and
 4 ordered to provide documents, information, and access necessary to trace and inventory
 5 defendants' assets.

6 3. Hearing of July 24, 2008

7 On July 24, 2008, a hearing was held on MCW's motion. MCW attended by and
 8 through its attorney, Colin Folawn, and company representative, Damon Maletta. No other
 9 party or attorney was in attendance. MCW moved for contempt on the affidavits, citing
 10 *Federal Trade Commission v. Productive Marketing, Inc., et al.*, 136 F. Supp. 2d 1096, 1107
 11 (C.D. Ca. 2001), which, in turn, quoted *United States v. Ayres*, 166 F.3d 991, 994 (9th Cir.
 12 1999), for the proposition that where a motion for contempt was essentially unopposed,
 13 contempt could issue on the affidavits. The Court considered MCW's authority and
 14 concluded that, although the cited authority supported MCW's position, the filing of
 15 declarations and an objection by defendants constituted an opposition, albeit a marginal one.
 16 In an abundance of caution, the Court ruled that MCW needed to provide testimony in
 17 support of its motion.
 18

19 MCW moved to present testimony telephonically, representing that it was prepared to
 20 call Edward Hostmann and Kimberley McGair to testify telephonically. MCW argued that
 21 there was good cause for the presentation of testimony in this manner, as the witnesses were
 22 out of the state and great expense would be incurred if they were required to travel to testify
 23 in person. The Court found that MCW had established good cause for the presentation of
 24

25
 26 ¹⁵ See Dkt. 103, 104, and 105.

1 testimony by telephone, but required that appropriate safeguards should be put in place, in
2 accordance with the civil rules.¹⁶

3 The Court ordered that telephonic testimony would be permitted, provided that a
4 notary public was present with the witnesses to confirm identities and administer oaths.¹⁷ In
5 addition, any party who wished to present telephonic testimony was to submit a list of
6 witnesses.¹⁸ MCW then moved for a continuance of the hearing so that these safeguards
7 could be established. The Court granted MCW's request and continued the hearing to
8 Tuesday, August 5, 2008 at 10:00 A.M.¹⁹ The hearing was subsequently re-noted to August 6,
9 2008 at 9:30 A.M., and parties were to submit witness lists for any telephonic testimony by
10 Tuesday, August 5, 2008.²⁰

12 As before, MCW was directed to attempt to provide notice of the minute order and
13 the hearing to Richie J.K. Sang, Brookes Sang, and SC Restaurants, Inc., by sending copies
14 of the order to last known addresses, email addresses, and fax numbers, as well as attempting
15 telephonic notification.²¹ As before, MCW's attorney submitted a declaration that evidenced
16 MCW's compliance with the Court's directive.²²

18 MCW filed and served its witness list for telephonic testimony, disclosing its intent to
19 offer telephonic testimony from John Mitchell, Kimberley McGair, and Edward Hostmann,
20

21 ¹⁶ A court may permit testimony in open court by contemporaneous transmission from a
22 different location for good cause in compelling circumstances and with appropriate
safeguards. FED. R. CIV. P. 43(a).

23 ¹⁷ Dkt. 108.

24 ¹⁸ *Id.*

25 ¹⁹ *Id.*

26 ²⁰ Dkt. 109.

²¹ *Id.*

1 and providing the credentials for the notary.²³ In accordance with the civil rules,²⁴ MCW also
2 submitted a highlighted copy of the deposition transcripts from the limited receiver's
3 examinations of Brookes Sang and Richie J.K. Sang.²⁵ Defendants filed no witness lists or
4 any other submissions.

5
6 4. Hearing of August 6, 2008

7 On August 6, 2008, the continued hearing was held on MCW's motion for contempt
8 and sanctions against defendants. MCW attended through its counsel, Colin Folawn. No
9 other party or counsel was present.

10 MCW presented a brief opening statement in support of its motion. Ms. Cargill
11 confirmed the identities of the witnesses, John Mitchell, Kimberley McGair, and Edward
12 Hostmann, each of whom was present with her in a conference room at the law offices of
13 Farleigh Wada Witt at 121 SW Morrison Street, Suite 600, Portland, Oregon 97204. Each
14 witness was sworn in and provided contemporaneous testimony by telephone.

15
16 At the conclusion of the testimony, MCW provided additional argument in support of
17 its motion. Based on the sworn testimony of the witnesses, the submissions of the parties,
18 and the arguments of counsel for MCW, the Court renders the findings of fact and
19 conclusions of law set forth below.

20 II. FINDINGS OF FACT

21 Having reviewed the sworn testimony of witnesses, submissions of the parties, and
22 court records on file, the Court makes the following findings of fact, which have been
23

24 ²² See Dkt. 110.

25 ²³ Dkt. 111.

26 ²⁴ See FED. R. CIV. P. 32(a).

²⁵ Dkt. 111; see *id.*, Exhs. A, B, & C.

1 established by clear and convincing evidence.

2 1. Following its appointment, the limited receiver attempted to obtain
3 documents, information, and access to premises and accounts, in order to fulfill its intended
4 function of preserving the *status quo*. To that end, the limited receiver acted through several
5 individuals, including John Mitchell, Joanne Conway, Kimberley McGair, and Edward
6 Hostmann.

7 2. John Mitchell is an independent contractor for the limited receiver. Following
8 the appointment of the limited receiver, Mr. Mitchell visited and examined the Sangs'
9 restaurants, and he made multiple requests of the Sangs for documents and information that
10 was necessary for the limited receiver to perform its function.

11 3. Kimberley McGair is an attorney for the limited receiver. Ms. McGair wrote
12 to the Sangs and their California counsel, L. Scott McClanahan, requesting documents and
13 depositions. Ms. McGair took depositions of Brookes Sang and Richie J.K. Sang, on behalf
14 of the limited receiver. She was also involved in the process of issuing subpoenas and
15 retaining an investigation firm, TransWest, to investigate the Sangs' assets and accounts after
16 they failed to provide the limited receiver with the necessary documents and information.

17 4. Edward Hostmann is the president of Edward Hostmann, Inc., the limited
18 receiver. Mr. Hostmann supervised, managed, and oversaw the efforts of the limited receiver
19 following its appointment in this matter.

20 5. In early and mid November 2007, John Mitchell, a representative acting on
21 behalf of the limited receiver, traveled to California on multiple occasions, met and
22 communicated with Brookes Sang and Richie J.K. Sang, and examined their various
23 restaurants in California. Mr. Mitchell's purpose was to investigate assets and obtain
24 information regarding the defendants' businesses and assets so that the Limited Receiver
25 could maintain the *status quo*. During his first visit, the Sangs would not provide information
26 until they were shown proof of the limited receiver bond. At a later time, after such proof

1 was provided, the Sangs provided only very limited documents and information, including
2 electronic access to a single bank account, copies of some bank statements for a limited
3 period, and limited documents relating to payroll and unpaid bills.

4 3. Mr. Mitchell attempted to establish a means by which the Sangs and SC
5 Restaurants, Inc., would request permission to make business expenditures. Considering the
6 number of establishments and the operations, there should have been several requests on a
7 daily basis, but defendants made very few requests for expenditures. Even with the requests
8 that were made to, and ultimately approved by, the limited receiver, the limited receiver was
9 not ~~been~~ provided with documents necessary to verify that the payments were made in the
10 manner approved. The Sangs and SC Restaurants, Inc., did not comply with the requirement
11 to obtain approval for all proposed expenditures and transfers.

12 4. In late November 2007, the limited receiver's counsel, Kimberley McGair,
13 wrote to California attorney L. Scott McClanahan, who has not formally appeared for the
14 Sangs or SC Restaurants, Inc. Ms. McGair again requested immediate production of the
15 documents requested earlier in November. She also requested a recorded examination of the
16 Sangs. The Sangs were not examined until January 4, 2008.

17 5. Defendants have not provided the limited receiver with any receipts, or any
18 documents ^{including information regarding} of profits, revenue, or income. Because the Sangs and SC Restaurants, Inc., did
19 not provide the limited receiver with the documents, information, and access necessary to
20 perform its duties, the limited receiver was forced to conduct much of its investigation
21 through the assistance of third-party records custodians. The limited receiver issued several
22 subpoenas and obtained information relating to more than twenty bank accounts. By its
23 nature, the subpoena process was slow and did not provide full information. This delay and
24 lack of information, caused by the defendants' failure to provide information, documents,
25 and access inhibited the limited receiver's ability to preserve the *status quo* during the
26 pendency of this litigation.

1 6. To date, MCW has incurred more than \$10,000.00 in fees and expenses for
2 work performed by the limited receiver in issuing third-party subpoenas, which were critical
3 to carry out the limited receiver's duties and which were made necessary due to defendants'
4 failure to provide the requested documents, information, and access.

5 7. To date, MCW has also incurred more than \$11,313.00 in fees for work
6 performed by the limited receiver's investigator, TransWest Investigations. TransWest was
7 retained by the limited receiver to investigate the Sangs' and SC Restaurants's assets,
8 properties, and other information.

9 8. The limited receiver does not typically hire such investigation firms, because
10 it is typically not necessary. In the limited receiver's experience, the subjects of a limited
11 receiver typically cooperate and provide documents, information, and access, vitiating any
12 need for third-party subpoenas or retaining an investigation firm. In this case, the limited
13 receiver needed to hire TransWest to conduct the investigation because defendants failed to
14 comply with the limited receiver's requests.

15 9. During the examinations of Brookes Sang and Richie J.K. Sang, Ms. McGair
16 learned that defendants provided documents to their mother, Patricia Read, rather than the
17 limited receiver. In testifying before the limited receiver, defendants provided very little
18 information regarding expenses, merely repeating that withdrawals were for restaurant
19 expenses or operations. The Court finds the Sangs' testimony to lack credibility.

20 10. At no time have the Sangs and SC Restaurants, Inc., provided the limited
21 receiver with full access to their financial records or their residences. Such documents,
22 information, and access is necessary in order to inventory their assets, evaluate expenditures,
23 and trace transfers of funds. Their failures have greatly impeded the limited receiver's to
24 perform its duties under this Court's order.

25 11. Defendants made several financial expenditures without the approval of the
26 limited receiver, in violation of the receiver order.

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 9**

PDX\116266\157194\CJF\2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.822.1711

12. Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., have failed to comply with the limited receiver order in what can only be considered willful disregard. Defendants have provided no detail, few documents, and no credible explanation for their failures. Defendants also made multiple expenditures without obtaining approval.

13. The Sangs claim that records were seized under a search warrant, but the record shows no attempt to provide on their part or on their behalf to ~~provide~~ any information, access, or even an inventory of documents and information that were previously in their possession and which they now claim are possessed by a district attorney. Regardless, defendants' opposition also provides no excuse for their failure to provide access to their residences in order to inventory their personal assets.

14. The limited receiver unsuccessfully attempted to obtain documents from the district attorney. There is no evidence that defendants have ever made such an attempt.

15. Defendants have willfully refused to comply with the limited receiver order and the limited receiver's requests. Defendants are in contempt of the Court's order and the limited receiver's requests, which issued with the authority of the Court.

III. CONCLUSIONS OF LAW

A district court has the inherent power to find a party in contempt, and it has the discretion to determine whether to impose compulsory and compensatory sanctions against an individual or entity found to be in contempt.²⁶ The procedure for civil contempt is to set an order to show cause hearing and to provide the contemnor an opportunity to respond and/or comply with the order.²⁷ That procedure has been followed in this case, culminating in the hearing of August 6, 2008. Due process considerations have been duly met, as defendants were provided with notice and an opportunity to be heard why sanctions and contempt

²⁶ *United States, et al. v. Asay, et al.*, 614 F.2d 655, 659 (9th Cir. 1980).

1 should not issue.

2 The party seeking an order of civil contempt must show by clear and convincing
3 evidence that the alleged contemnor violated the court's order.²⁸ Willfulness is not an
4 element of civil contempt.²⁹

5
6 MCW has demonstrated through clear and convincing evidence that defendants have
7 violated the Court's order. Defendants have failed to provide the limited receiver with the
8 necessary documents, information, and access necessary for it to perform its duties and
9 preserve the *status quo*. Moreover, defendants made multiple expenditures without obtaining
10 the limited receiver's approval. Defendants provided very limited documents and electronic
11 access to only one bank account, in an attempt to imply that it was the only account. After
12 defendants' willful noncompliance forced the limited receiver to issue third-party subpoenas
13 and retain an investigation firm, the limited receiver learned of more than twenty other
14 accounts that defendants failed to identify. Defendants have violated the court's order and are
15 in contempt.
16

17 A party or non-party's failure to abide by an *in rem* injunction and subsequent
18 transfer, assignment, or disposition of property subject to the injunction can be deemed to
19 constitute contempt of court.³⁰ In this case, the order appointing the limited receiver sought
20

21 ²⁷ See *International Union, UMWA v. Bagwell*, 512 U.S. 821, 831-834 (1994).

22 ²⁸ *Federal Trade Commission v. Productive Marketing, Inc., et al.*, 136 F. Supp. 2d 1096,
23 1107 (C.D. Ca. 2001). Federal courts may, at their discretion, punish the disobedience of any
24 lawful writ, process, order, rule, decree, or command by fine, imprisonment, or both, as
25 contempt of their authority. See 18 U.S.C. § 401.

24 ²⁹ *Productive Marketing, Inc.*, 136 F. Supp. 2d at 1107.

25 ³⁰ See generally *Productive Marketing, Inc.*, 136 F. Supp. 2d at 1107-1111 (discussing
26 noncompliance with order, noting misdirection of deposits, finding that ACCPC failed to
take all reasonable steps to within its power to comply, and holding that contempt sanctions
were warranted).

1 to preserve assets and the *status quo*, enabling the limited receiver to conduct an accounting
 2 of the defendants' assets. Therefore, the order was essentially a form of *in rem* injunction.³¹

3 The failure to produce documents and/or information in response to a formal request
 4 for the same can also constitute contemptuous conduct.³² Substantial compliance can be a
 5 defense to contempt, but a party must take all reasonable steps within its power to comply
 6 with a specific and definite court order.³³ In this case, no evidence shows or implies that
 7 defendants took all reasonable steps within their power to comply with the order appointing
 8 the limited receiver or the limited receiver's requests for documents, information, and access.
 9 To the contrary, the evidence shows that defendants provided only a small amount of
 10 documents, information, and access, in an effort to mislead the limited receiver, implying
 11 that there was nothing else.
 12

13 Defendants' refusal to comply with the order and requests obstructed the limited
 14 receiver's ability to conduct its court-ordered investigation, greatly increasing costs.
 15 Defendants have disregarded substantially all of their obligations under the order.
 16

17 Defendants have also implied that they are unable to comply because documents and
 18 computers were seized by a district attorney in California in an ongoing criminal matter. But
 19 it is axiomatic that defendants to a criminal matter are constitutionally entitled to access
 20 documents that purportedly support a charge against them. There is no evidence that
 21

22 ³¹ See *id.* at 1105.

23 ³² See generally *id.* at 1110-1111 (discussing requirement to produce documents and
 24 accounting and finding that ACCPC "failed to comply with the Receiver's request for an
 accounting").

25 ³³ See *id.* at 1105; see also *Texaco Refining and Marketing, Inc.*, 1993 U.S. Dist. LEXIS
 26 8931, at *3 ("a person fails to act as ordered by the court when he fails to take 'all the
 reasonable steps within his power to insure compliance with the court's order.'") (quoting
Shuffler v. Heritage Bank, 720 F.2d 1141, 1146-47 (9th Cir. 1983)).

1 defendants have made any attempt to obtain copies of or access to the purportedly seized
 2 documents. Although an inability to comply with an order is ordinarily a defense to a charge
 3 of contempt, self-induced inability is no defense.³⁴ Defendants' apathy and refusals to obtain
 4 or access documents and information is no defense. Defendants are in contempt of court.
 5 Therefore, the Court must determine the appropriate remedies.
 6

7 Compulsory and/or compensatory sanctions, otherwise known as civil sanctions, are
 8 intended to: (1) coerce defendant into compliance with the court's order; and (2) compensate
 9 the complainant for losses sustained as a result of the contumacious behavior.³⁵ Civil
 10 sanctions are appropriate when the "contemnor is able to purge the contempt by his own
 11 affirmative act and 'carries the keys of the prison in his own pocket.'"³⁶ Imprisonment can be
 12 remedial if the contemnor stands committed unless and until he performed the affirmative act
 13 required by the court's order.³⁷ Conditional fines are appropriate civil sanctions when
 14 imposed to coerce compliance.³⁸ Courts have wide discretion to determine what
 15 compensatory contempt fine should be imposed.³⁹
 16

17 MCW has requested a broad range of civil contempt sanctions. As discussed below,
 18

19 ³⁴ See *United States, et al. v. Asay, et al.*, 614 F.2d 655, 660 (9th Cir. 1980) (citing *In RE D.I.*
 20 *Operating Co.*, 240 F.Supp. 672 (D. Nev. 1965)).

21 ³⁵ *Id.* at 1112 (citing *United States v. Ayres*, 166 F.3d 991, 997 (9th Cir. 1999)).

22 ³⁶ *Id.* at 1112 (quoting *Ayres*, 166 F.3d at 997).

23 ³⁷ *Hicks v. Feiock*, 485 U.S. 624, 631 (1988).

24 ³⁸ See *Productive Marketing, Inc.*, 136 F. Supp. 2d at 1111 (ordering civil sanctions to cover
 25 actual damages incurred as a result of the noncompliance and imposing \$250 per day, with
 26 the amount doubling with each additional day of noncompliance where a non-party failed to
 report and account for certain assets and misdirected certain other assets within the receiver's
 authority despite numerous requests by the receiver).

³⁹ *Asay*, 614 F.2d at 660 (citing *United States v. United Mine Workers*, 330 U.S. 258, 304
 (1947)).

the Court finds defendants in contempt and orders the compulsory sanctions and compensatory terms.

IV. ORDER OF CIVIL CONTEMPT AND SANCTIONS

The Court finds that defendants Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc. (collectively "defendants"), are in contempt of Court for their failure to provide documents, information, and access as required under the order appointing the limited receiver and the limited receiver's requests. Coercive and compulsory sanctions are necessary to obtain defendants' compliance. Accordingly, civil contempt sanctions are ordered against defendants Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., as follows:

1. As of the date of entry of this Order, the Court imposes a conditional fine of \$1,000.00 per day as to Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., severally, but not jointly and severally. This conditional fine will continue on a daily basis for 45 days unless defendants purge themselves of contempt and terminate the conditional daily fine of \$1,000.00 per day by taking the actions set forth in paragraph 6 below. The Court concludes that, although there is no statutory ceiling, the Court is to consider the financial condition of the parties and the coercive effect of the conditional fine. Accordingly, the Court finds that, at this time, the amount and extent of the conditional fine described herein is appropriate. This conditional fine, ^{if Brookes Sang, Richie J.K. Sang and S.C. Restaurants do not purge themselves of contempt,} is to be paid to MCW within ⁵⁰45 days of the entry of this order.

2. If after 45 days from the entry of this order, defendants have not purged themselves of contempt as set forth in paragraph 6 below, MCW may apply for additional civil contempt sanctions against defendants, including but not limited to incarceration for a term to continue until it no longer serves any purpose of coercion for compliance.

3. The Court further imposes compensatory terms against Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., ~~severally, but not~~ jointly and severally, in the amount of \$21,313.00, which reflects the amount of limited receiver costs and expenses that were

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 14**

PDX/116266/157194/CJF/2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.622.1711

1 caused and made necessary by defendants' willful disregard of the limited receiver order and
2 requests for documents, information, and access. This amount reflects \$10,000.00 in costs
3 and expenses incurred by the issuance of subpoenas following defendants' noncompliance
4 and \$11,313.00 in costs and expenses incurred in retaining the TransWest investigation firm.
5 Defendants are to pay these compensatory terms in the amount of \$21,313.00 to MCW
6 within 30 days of the entry of this order.

7 4. MCW has requested a punitive sanction of \$50,000.00. Although this may
8 seem appropriate due to defendants' clearly willful disregard of the limited receiver order
9 and the limited receiver's requests, the majority rule is that criminal contempt proceedings
10 cannot be brought into civil contempt proceedings. Hopefully, the civil contempt sanctions
11 set forth elsewhere in this Order are sufficient to compel defendants' compliance. The Court,
12 therefore, declines to order any punitive sanctions against defendants.

13 5. MCW has requested leave to file a subsequent petition for attorneys' fees and
14 costs incurred with its motion for civil contempt and sanctions. At this time, the Court does
15 not issue a ruling as to whether MCW is entitled to attorneys fees and costs. Although the
16 Court does not comment or rule on the propriety of such a motion, at this time, the Court will
17 hear any such motion for attorneys' fees and costs if MCW is inclined to bring it, either at a
18 time during this litigation or at its conclusion.

19 6. Defendants may purge themselves of contempt by completing the following
20 actions:

21 (a) provide to the limited receiver an itemized and complete identification of how
22 moneys loaned to defendants by the plaintiff were received, deposited, allocated, and/or
23 spent;

24 (b) identify to the limited receiver all bank accounts and/or investment accounts
25 owned, controlled, and/or directed by defendants between 2006 to the present;

26 (c) provide to the limited receiver full access to defendants' (i) bank records, (ii)

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 15**

PDX/116266/157194/CJF/2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.622.1711

1 financial documents, and (iii) residences;

2 (d) identify to the limited receiver all expenditures made by defendants between
3 November 9, 2007 to the present;

4 (e) identify to the limited receiver all assets and liabilities by defendants;

5 (f) provide to the limited receiver all financial records of defendants relating to
6 all bank accounts;

7 (g) provide to the limited receiver all credit card processing reports of defendants
8 between November 21, 2006, and November 21, 2007;

9 (h) provide to the limited receiver all bank statements of defendants between
10 November 21, 2006, and November 21, 2007;

11 (i) provide to the limited receiver all cancelled checks of defendants between
12 November 21, 2006, and November 21, 2007;

13 (j) provide to the limited receiver electronic access to all bank accounts of
14 defendants;

15 (k) provide to the limited receiver all payroll reports of defendants between
16 November 21, 2006, and November 21, 2007;

17 (l) provide to the limited receiver all documents related to any and all assets of
18 SC Restaurants, Inc., and RB Sampson, LLC, including personal property, real property, and
19 vehicles;

20 (m) provide to the limited receiver all bank statements for any and all accounts
21 upon which defendants are account holders or signatories between November 21, 2006, and
22 November 21, 2007;

23 (n) provide to the limited receiver lists of all addresses held or used by defendants
24 since November 21, 2005;

25 (o) provide to the limited receiver credit card statements for any credit card held
26 by defendants between November 21, 2006 and November 21, 2007;

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 16**

PDX\116266\157194\CJF\2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.422.1711

1 (p) provide to the limited receiver access to defendants' residences to inventory
2 all assets;

3 (q) pay to MCW the compensatory terms set forth in paragraph 3, above, as well
4 as any accrued conditional fines; and

5 (r) move the Court for an order that contempt has been purged, including any and
6 all evidence to prove that provisions (a)-(q), above, have been fulfilled.

7 It is so ordered.

8 Dated this 18th day of August, 2008.

9
10 
11 THE HONORABLE JAMES L. ROBART
12 UNITED STATES DISTRICT JUDGE

12 Presented By:

13 SCHWABE, WILLIAMSON & WYATT, P.C.

14 
15 By: Colin Folan, WSBA #34211
16 Of Attorneys for Plaintiff,
17 Mission Capital Works, Inc.
18 Schwabe, Williamson & Wyatt
19 1420 Fifth Avenue, Suite 3010
20 Seattle, WA 98101
21 Telephone: 206-622-1711
22 Facsimile: 206-292-0460
23 Email: cfolawn@schwabe.com
24
25
26

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF SANCTIONS AND CONTEMPT: CASE NO. C-
07-1807 JLR - 17

PDX/116266/157194/CJF/2844676.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.622.1711